

1 2002-05-HO

2 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

3 In the Matter of:

4 SMITH'S FOOD STORES INC.)
5 DBA FRY'S FOOD & DRUG #112)
6 1575 N Dysart Rd.)
7 Avondale, AZ 85323)
Non-Prescription Drug Permit)
Number P08552)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND BOARD ORDER
NO. 2002-05-PHR**

8 TO: SMITH'S FOOD STORES INC.
9 DBA FRY'S FOOD & DRUG #112
10 1575 N Dysart Rd.
Avondale, AZ 85323

11 Pursuant to the foregoing Consent to Entry of Order, the evidence and records compiled and
12 contained in the file for SMITH'S FOOD STORES INC., DBA FRY'S FOOD & DRUG #112, the
13 Arizona State Board of Pharmacy on this 2nd day of May, 2002 adopts the following Findings of Fact,
14 Conclusions of Law and Board Order in the Matter of Notice of Hearing Number 2002-05-PHR
15 ("Notice").

16 **FINDINGS OF FACT**

17 **I**

18 1. SMITH'S FOOD STORES INC., DBA FRY'S FOOD & DRUG #112, is the holder of Non-
19 Prescription Drug Permit Number P08552 issued by the Arizona State Board of Pharmacy pursuant to
20 A.R.S. § 1930(A)(1), which allows FRY'S FOOD & DRUG #112 to sell, retail, stock, expose or offer
21 for sale at retail non-prescription drugs in the original package in the State of Arizona.

22 2. On or about the 1st day of March, 2001, SMITH'S FOOD STORES INC., doing business as
23 FRY'S FOOD & DRUG #112, offered for sale to the public thirty-five (35) drug items as listed in
24 APPENDIX A in the non-prescription drug department of the store that had exceeded the manufacturer's
25 expiration date in violation of A.R.S. § 32-1932(A)(1) and A.A.C. § R4-23-603(E). Fry's Food & Drug
26 employee Marilyn Cain, Drug Manager, responded in writing to a Board violation letter, that all expired

1 drug items had been removed from sale and that a sign-off sheet designed to prevent outdates from being
2 offered for sale had been instituted.

3 3. On or about the 30th day of January, 2002, SMITH'S FOOD STORES INC., doing business
4 as FRY'S FOOD & DRUG #112, offered for sale to the public fifty-one (51) drug items as listed in
5 APPENDIX B in the non-prescription drug department of the store that had exceeded the manufacturer's
6 expiration date in violation of A.R.S. § 32-1932(A)(1) and A.A.C. § R4-23-603(E). Fry's Food & Drug
7 employees responded in writing to a Board violation letter, that all expired drug items had been removed
8 from sale and an ongoing program designed to prevent outdates had been instituted.

9 4. On the day of April, 2002, FRY'S FOOD & DRUG #112 entered into a Consent to Entry
10 of Order with the Arizona State Board of Pharmacy regarding the Notice.

11 CONCLUSIONS OF LAW

12 II

13 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-1932(A) and A.A.C. § R4-23-
14 603 (E).

15 2. The Board concludes that FRY'S FOOD & DRUG #112 violated A.R.S. § 32-1932(A) and
16 A.A.C. § R4-23-603 (E).

17 ORDER

18 III

19 Non-Prescription Drug Permit Number P08552 issued to SMITH'S FOOD STORES INC., DBA
20 FRY'S FOOD & DRUG #112, is hereby placed on probation for a period of one (1), year commencing
21 30 days from the date of this Order, on the following terms and conditions:

22 1. SMITH'S FOOD STORES INC., DBA FRY'S FOOD & DRUG #112 shall pay a civil penalty
23 of ten dollars (\$10.00) for each of the fifty-one (51) violations itemized in APPENDIX B listed in
24 paragraph IV on page two (2) of the Notice, for a total of five hundred and ten dollars (\$510.00) to the
25 Board of Pharmacy within sixty (60) days of the date of this Order.

26 2. FRY'S FOOD & DRUG #112 shall obey all federal and state laws and rules governing the

1 practice of pharmacy.

2 3. If FRY'S FOOD & DRUG #112 violates this Order in any way or fails to fulfill the
3 requirements of this Order, the Board, after giving FRY'S FOOD & DRUG #112 Notice and the
4 opportunity to be heard, may revoke, suspend or take other disciplinary action against FRY'S FOOD &
5 DRUG #112.

6
7 DATED this 2nd day of May, 2002

8 ARIZONA STATE BOARD OF PHARMACY

9
10 SEAL

11 By Llyn A. Lloyd
12 Llyn A. Lloyd
13 Executive Director
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1 Copies of the foregoing Finding
2 of Fact, Conclusions of Law and
3 Board Order mailed by certified
4 mail this 30 day of May, 2002 to:

5 Daniel Milovich RPh
6 C/O Smith's Food Stores Inc.
7 P O Box 6016
8 Phoenix, AZ 85005-6016

9 and by Courier Mail to:

10 Victoria Martin
11 Assistant Attorney General
12 Civil Division
13 Office of the Attorney General
14 1275 W. Washington
15 Phoenix, AZ 85007
16 Attorney for the State

17 and

18 Victoria Mangiapane
19 Assistant Attorney General
20 Solicitor General's Office
21 Office of the Attorney General
22 1275 W. Washington
23 Phoenix, AZ 85007
24
25
26

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Smith's Food Stores Inc.
DBA: Fry's Food & Drug #112
1575 N. Dysart Rd.
Avondale, AZ 85232

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

Annette Weir

5/4/02

C. Signature

X

Annette Weir

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